

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
JANUARY 10, 2005

D044760 People v. Burnett

The judgment is affirmed. Haller, Acting P.J.; We Concur: O'Rourke, J., Aaron, J.

D045408 Bettinardi Golf Inc., et al. v. Superior Court of San Diego County/Kamatari et al.

At the request of petitioners, the petition for writ of mandate is dismissed.

D044798 Gillmann v. Frogue

Upon written stipulation filed by the parties to the appeal, the appeal is dismissed and the remittitur is ordered to issue immediately. Each party to bear own costs on appeal.

D043271 Reynoso v. Newman

The judgment is affirmed. McConnell, P.J.; We Concur: Benke, J., Huffman, J.

D045239 Alma O. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The petition is denied. McIntyre, Acting P.J.; We Concur: O'Rourke, J., Aaron, J.

D044571 Loganbach v. County of San Diego

The appeal is dismissed pursuant to California Rules of Court, rule 17(a).

Court convened at 9:00 a.m.

Present: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Richard Huffman and Terry O'Rourke
Clerk: D. E. Moore

D044189 Finseth v. Pohl et al.

Cause called on merits. Matthew Charles Smith, Esq. argued for appellant. Robert Schlein, Esq. argued for respondent. Mr. Smith replied. Cause submitted.

D044893 Yates v. San Diego Unified School District

Cause called on merits. Fernando Yates, argued for appellant in pro per. Jose A. Gonzales, Esq. argued for respondent. Mr. Yates replied. Cause submitted.

Court recessed at 9:42 a.m. to change panel members. New panel members: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Terry O'Rourke and Joan Irion

D043620 Erickson et al. v. REM Concepts, Inc.

Cause called on merits. Bill Naumann, Esq. argued for appellant. Timothy D. Lucas, Esq. argued for respondent. Mr. Naumann replied. Cause submitted.

Court recessed at 10:09 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
JANUARY 10, 2005 (Continued)

Present: The Honorable Terry O'Rourke, Acting Presiding Justice, and The Honorable Associate Justices Cynthia Aaron and Joan Irion
Clerk: D. E. Moore

D043169) Torrey Hills Community Coalition v. City of San Diego et al.

D043171) Torrey Hills Community Coalition v. City of San Diego et al.

D043549) Torrey Hills Community Coalition v. City of San Diego et al.

Cause called on merits. Julie M. Hamilton, Esq. argued for appellant, Torrey Hills. Monty A. McIntyre, Esq. argued for appellant, Westbrook Torrey Hills. Claudia Gacitua Silva, Esq. argued for the City. Kathryn E. Karcher, Esq. argued for respondent, Applied Molecular. Jenny K. Goodman, Esq. argued for respondent, Nexus Properties. Ms. Hamilton replied. Cause submitted.

Court recessed at 2:10 p.m. to change panel members: New panel members: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Terry O'Rourke and Joan Irion

D043455 Rombe Corporation v. Allied Insurance et al.

Cause called on merits. Gregory P. Goonan, Esq. argued for appellant. Scott A. Johnson, Esq. argued for respondent. Mr. Goonan replied. Cause submitted.

Court recessed at 2:48 p.m. to change panel members. New panel members: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and Terry O'Rourke

D043394 People v. Emick

Cause called on merits. Anthony J. Dain, Esq. argued for appellant. Elizabeth Voorhies, Deputy Attorney General argued for respondent. Mr. Dain replied. Cause submitted.

Court recessed at 3:06 p.m. until Tuesday, January 11, 2005 at 9 a.m.

D043795 County of San Diego v. Anderson et al.

Appellants' motion for a stay of sale of the property is deemed a petition for writ of supersedeas. The petition has been read and considered by Presiding Justice McConnell and Associate Justices Nares and Haller. The petition is denied without prejudice for failure to make a proper showing for relief. (See cases cited in Markley v. Superior Court (1992) 5 Cal.App.4th 738, 749).

D044398 In re Lisa G., a Juvenile

It is ordered that the opinion filed herein on December 14, 2004, be modified. There is no change in the judgment.

D045371 Samuel K. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The attorney for petitioner Samuel K. has notified the court on behalf of the petitioner that a Petition for Writ of Mandate under Rule 38.1 will not be filed as there are no viable issues for writ review. The case is dismissed.

D045330 Electrolux Home Products, Inc. v. Superior Court of San Diego County/Sawires et al.

The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
JANUARY 10, 2005 (Continued)

D045338 City of San Diego v. Superior Court of San Diego County/Michael K.
The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
JANUARY 11, 2005

D043556 People v. King

The judgment is affirmed. Huffman, J.; We Concur: Benke, Acting P.J., McDonald, J.

D041919 People v. Crawford

The judgment is modified to reduce Crawford's conviction on count 3 to a violation of Penal Code section 288, subdivision (a). As modified, the judgment is affirmed. Irion, J.; We Concur: Nares, Acting P.J., Haller, J.

D045561 Walker v. Superior Court of Imperial County/People

The petition is denied.

D044399 People v. Dennis K.

All proceedings in this cause have permanently abated by reason of appellant's death. The Superior Court is directed to enter its order to that effect in the record. There no longer being an appellate objective, the appeal is dismissed.

D043110 People v. Delrosario

The sentence, insofar at the trial court imposed the upper term for the section 12022.5, subdivision (a)(1) enhancement, is vacated; in all other respects, the judgment is affirmed. The case is remanded to the trial court to conduct a new sentencing hearing consistent with the principles discussed in this opinion. McDonald, J.; I Concur: McConnell, J.; Concurring and Dissenting Opinion: Benke, J.

D043810 In re Cody A., a Juvenile

The judgment is affirmed. Benke, Acting P.J.; We Concur: Aaron, J., Irion, J.

D045230 Howell, Jr. v. Burns

Appellant has failed to file a brief after notice given pursuant to California Rules of Court, rule 17(a). The appeal is DISMISSED.

D045352 County of San Diego v. Cavette

Appeal from the order of August 27, 2004 is dismissed on the ground it is nonappealable as a contempt order made final and conclusive by Code of Civil Procedure section 1222.

D044904 In re Juliette W., a Juvenile

The judgment is affirmed. Nares, Acting P.J.; We Concur: Aaron, J., Irion, J.

Court convened at 9 a.m.

Present: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Patricia Benke and Joan Irion
Clerk: D. Moore

D043733 People v. Morris

Cause called on merits. Elizabeth Missakian, Esq. argued for appellant. Pam Ratner-Sobeck, Deputy Attorney General argued for respondent. Ms. Missakian replied. Cause submitted.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
JANUARY 11, 2005 (Continued)

D043829 The H. N. & Frances C. Berger Foundation v. City of Escondido et al.

Cause called on merits. Ronald R. St. John, Esq. argued for appellant. Don Lincoln, Esq. argued for respondent, and submitted an additional authority. Mr. St. John replied. Cause submitted.

D044445 Hoveida v. Scripps Health et al.

Cause called on merits. Robert Martin Shaughnessy, Esq. argued for appellant. Blake Jones, Esq. argued for respondent. Mr. Shaughnessy replied. Cause submitted.

Court recessed at 10:05 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and Cynthia Aaron

Clerk: D. Moore

D043582 People v. Clark

Cause called on merits. Richard W. Weinthal, Esq. argued for appellant. Scott Taylor, Deputy Attorney General argued for respondent. Mr. Weinthal replied. Cause submitted.

D043095 Humble v. Humble

Cause called on merits. Richard Sanford Trugman, Esq. argued for appellant. Stephen Temko, Esq. argued for respondent. Mr. Trugman replied. Cause submitted.

D044368 Supralife International v. Whiting et al.

Cause called on merits. Joe Kracht, Esq. argued for appellant. Margaret Pitchkolan, Esq. argued for respondent. Mr. Kracht replied. Cause submitted.

Court recessed at 2:36 p.m. to change panel members. New panel members: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and James McIntyre

D043755 People v. Osborn

Cause called on merits. Barbara A. Smith, Esq. argued for appellant. Ron Jakob, Deputy Attorney General argued for respondent. Cause submitted.

D042157 People v. Smith

Cause called on merits. Dennis Fischer, Esq. argued for appellant. Teresa Torreblanca, Deputy Attorney General argued for respondent. Mr. Fischer replied. Cause to be submitted at a later date.

Court recessed at 3:17 p.m. to change panel members. New panel members: The Honorable Judith Haller, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and James McIntyre

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
JANUARY 11, 2005 (Continued)

D043718 Franklin & Franklin et al. v. Alberts et al.

Cause called on merits. J. David Franklin, argued for appellant. David Noonan, Esq. argued for respondent. Mr. Franklin replied. Cause submitted.

Court recessed at 4:08 p.m. until Wednesday, January 12, 2005 at 9 a.m.

D045426 In re Henderson on Habeas Corpus

The petition is denied.

D043169) Torrey Hills Community Coalition v. City of San Diego et al.

D043171) Torrey Hills Community Coalition v. City of San Diego et al.

D043549) Torrey Hills Community Coalition v. City of San Diego et al.

The order of January 10, 2005, submitting the above-entitled matter is vacated. The matter will be resubmitted after all supplemental briefing is completed.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
JANUARY 12, 2005

D044605 Lemon Grove Interagency Drug & Alcohol Advisory Committee v. Curry
Pursuant to California Rules of Court, rule 8, the appeal filed June 21, 2004, is dismissed for appellant's failure to timely designate the record.

D045311 People v. Galligan
Upon filing an abandonment of appeal, the appeal is dismissed.

D043948 People v. Moustirats
The sentence is modified to strike the two one-year prior prison term enhancements under section 667.5, subdivision (b). The trial court is directed to prepare an amended abstract of judgment reflecting this modification and forward it to the Department of Corrections. In all other respects, the judgment is affirmed. Haller, Acting P.J.; We Concur: McDonald, J., McIntrye, J.

D043517 Diaz v. City of El Centro
Judgment reversed. The superior court is ordered to vacate its judgment granting Diaz's petition for writ of administrative mandate and to enter a new judgment denying the petition. The parties to bear their own costs on appeal. Haller, J.; We Concur: Nares, Acting P.J., O'Rourke, J.

D041953 Atta v. Adams
The judgment is reversed and the matter is remanded for further proceedings. Aaron, J.;
We Concur: Huffman, Acting P.J., McDonald, J.

D042829 Oliver v. Shook
Summary judgment is affirmed. Each party to bear its own costs. Huffman, J.;
We Concur: McConnell, P.J., Benke, J.

D044189 Finseth v. Pohl et al.
The order denying the petition to compel arbitration is affirmed. Benke, Acting P.J.;
We Concur: Huffman, J., O'Rourke, J.

D044980 Iroanusi v. Breitbard Properties, LLC. et al.
D044242
The court has read and considered appellant's letter filed on December 23, 2004, and respondents' letter filed on January 7, 2005. The appeal filed on August 24, 2004, as amended on August 25, 2004, is DISMISSED as untimely. (Cal. Rules of Court, rule 2, all references are to the California Rules of Court). Appellant's request to set aside the dismissal in D044242 is DENIED. (Rule 24(b)(1)).

D045648 In re Ismael Medina on Habeas Corpus
The petition is denied.

D045435 In re Gamlin on Habeas Corpus
The petition is denied because it was not filed in the superior court in the first instance.

D045440 In re Fekadu on Habeas Corpus
The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
JANUARY 12, 2005 (Continued)

Court convened at 9 a.m.

Present: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and James McIntyre
Clerk: D. Moore

D043775 Webb & Carey A.P.C. v. Keenan et al.

Cause called on merits. Sam Henein, Esq. argued for appellant. Patrick D. Webb, Esq. argued for respondent. Mr. Henein replied. Cause submitted.

Court recessed at 9:31 a.m. to change panel members. New panel members: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices Judith Haller and James McIntyre

D043422 Baldwin Builders et al. v. Coast Plastering Corporation et al.

Cause called on merits. Stephen Francis Tee, Esq. argued for appellant. Ron Lauter, Esq. argued for respondent, Coast Plastering. Timothy D. Lucas, Esq. argued for respondent, T&M Framing. Mr. Tee replied. Cause submitted.

Court recessed at 10:28 a.m. to change panel members. New panel members: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Terry O'Rourke and Joan Irion

D043367 E. T. Corp. v. Unique Opportunities LLC

Cause called on merits. Michael Werner Battin, Esq. argued for appellant. Steven Cummings, Esq. argued for respondent. Mr. Battin replied. Cause submitted.

Court recessed at 10:48 a.m. to change panel members. New panel members: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Patricia Benke and Terry O'Rourke

D041600 Sagi v. Infinity Capital LLC. et al.

Cause called on merits. Frank E. Rogozienski, Esq. argued for appellant/cross-respondent, Sagi. Daniel Lamb, Esq. argued for respondent/cross-appellant, Gray Cary Ware & Friedenrich. Michael Lee Eidel, Esq. argued for respondent/cross-appellant, Infinity Capital, LLC. Mr. Rogozienski replied. Mr. Lamb replied. Cause submitted.

Court recessed at 11:25 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Terry O'Rourke and Joan Irion
Clerk: D. Moore

D043401 Reichner et al. v. Maywood

Cause called on merits. Ned Good, Esq. argued for appellant/cross-respondent. Thomas Todd, Esq. argued for respondent/cross-appellant. Mr. Good replied. Cause submitted.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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JANUARY 12, 2005 (Continued)

Court recessed at 2:21 p.m. to change panel members. New panel members: The Honorable Judith Haller, Acting Presiding Justice, and The Honorable Associate Justices Cynthia Aaron and Joan Irion

D041350) People v. Xayasomloth et al.

D041352) People v. Aphayavong

Cause called on merits. John L. Lanahan, Esq. argued for appellant, Xayasomloth. Michael Bacall, Esq. argued for appellant, Aphayavong. Andrew Mestman, Deputy Attorney General argued for respondent. Mr. Lanahan replied. Mr. Bacall replied. Cause submitted.

Court recessed at 3:13 p.m. to change panel members. New panel members: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Richard Huffman and Terry O'Rourke

D043655 McInerny v. Adams

Cause called on merits. Bill Pate, Esq. argued for appellant. William Nathaniel Woodson, Esq. argued for respondent. Mr. Pate replied. Cause submitted.

D043765 Baker v. McGraw-Hill Broadcasting Company Inc., et al.

Cause called on merits. Guylyn R. Cummins, Esq. argued for appellant. Mark Bennett, Esq. argued for respondent. Ms. Cummins replied. Cause submitted.

Court recessed at 3:52 p.m. until Thursday, January 13, 2005 at 9 a.m.

D045545 One Broadway Plaza v. Superior Court of San Diego County/City Council of Santa Ana et al.

The request for judicial notice is granted. The petition is denied.

D045589 In re Fekadu on Habeas Corpus

The petition is denied as duplicative of petition D045440.

D045157 Shapiro v. Frueauf

Upon written request filed by appellant, the appeal is dismissed and the remittitur is ordered to issue immediately.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
JANUARY 13, 2005

D045192 Zora et al. v. Superior Court/M&H Realty Partners IV~RPI

Matter called on merits. Stephen Ellis, Esq. argued for petitioner. Michael F. Wright, Esq. argued for real party in interest. Mr. Ellis replied. Matter submitted.

Court adjourned at 9:36 a.m.

D045594 One Broadway Plaza v. Superior Court of San Diego County/The City Counsel of the City of Santa Ana et al.

The motion to consolidate petitions D045595 and D045594 is denied. The petition is denied.

D045694 Collectors Universe Inc., et al. v. Superior Court of San Diego County/Real Legends, Inc.

The petition is denied.

D044556 City of San Diego v. DMIG Fund 47, L.P.

Upon written request filed by appellant, the appeals are dismissed and the remittitur is ordered to issue immediately (Cal. Rules of Court, rule 20(c)(2)).

D043224 Orozco v. Evangelatos et al.

The order is affirmed in part and reversed in part and the matter is remanded with directions that the trial court vacate the order dismissing Orozco's action and issue a new order granting a stay of Orozco's action, subject to the following conditions (and such other conditions the court deems appropriate): (1) submission by all Defendants of written stipulations consenting to the jurisdiction of the Mexican courts for trial of Orozco's claims; (2) submission by all Defendants of written stipulations waiving or tolling any applicable Mexican statutes of limitations during the pendency of Orozco's California action; and (3) in the event the Mexican courts dismiss Orozco's action for lack of jurisdiction over Defendants or because of a statute of limitations bar or otherwise refuse to resolve the merits of the case, the trial court may dissolve the stay and resume proceedings in the instant California action. Each party to bear its own costs on appeal. McDonald, J.; I concur: Benke, Acting P.J., I concur in result: Huffman, J.

D043508 People v. Nelson

The judgment is affirmed. Aaron, J.; We Concur: Haller, Acting P.J., Irion, J.

D045522 Nancy P. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The attorney for petitioner Nancy P. has notified the court on behalf of the petitioner that a Petition for Writ of Mandate under Rule 38.1 will not be filed as there are no viable issues for writ review. The case is dismissed.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
JANUARY 14, 2005

D044535 People v. Comstock

The judgment is affirmed. O'Rourke, J.; We Concur: Nares, Acting P.J., McIntyre, J.

D043481 People v. Parras

The judgment is affirmed. McDonald, Acting P.J.; We Concur: McIntyre, J., Aaron, J.

D043582 People v. Clark

The judgment is affirmed. Nares, Acting P.J.; McDonald, J., Aaron, J.

D042358 Glassman et al. v. Southwest Airlines Co.

The judgment is affirmed. Southwest Airlines is awarded costs on appeal. Aaron, J.;
We Concur: Nares, Acting P.J., Irion, J.

D045677 People v. O'Rourke

The appeal filed on January 5, 2005 is dismissed.

D043367 E.T. Corporation v. Unique Opportunities, LLC

For the foregoing reasons, the order denying Unique's request for attorney fees is reversed and the matter
remanded for further proceedings. Irion, J.; We Concur: Huffman, Acting P.J., O'Rourke, J.

D045715 Bates v. Superior Court of San Diego County/Winet

The petition is denied.